



Reference: TG EUR 18/2020.1199

Legal Committee

2 December 2020

Dear Legal Committee Members,

REFORM OF THE LEGAL DEFINITION OF RAPE IN DENMARK

Last week, the Danish Parliament considered the government's proposal for a new Danish rape law. After organizations, rape survivors, activists and politicians have worked on reforming the legal definition of rape in Denmark, it now seems possible that the new law will be passed by an overwhelming majority. That means Denmark will soon say goodbye to a decades-old notion that it is the victim's own responsibility to prevent rape; instead, Danish legislation will clearly state, for present and future generations, that sex must be based on mutual consent, otherwise it is rape.

Amnesty International has been working on access to justice for rape in Denmark, and in Europe more broadly, for several years. In March 2019, we launched an in-depth report "*Give us respect and justice!*" *Overcoming barriers to justice for women rape survivors in Denmark*" and held a meeting with representatives of the Ministries of Justice and Equality and Education.

Amnesty International welcomes your efforts in this regard. The reform will be celebrated not only in Denmark but internationally. As part of an international campaign, Amnesty International collected more than 17,500 signatures from over 80 countries around the world calling on the Danish authorities to change the rape law. But even though there is historic progress in sight, the draft is not quite there yet, which is why I am writing to you. Before the law's second reading in the Legal Committee and the third reading and the vote, I would like to raise your awareness as members of the Legal Committee that some details of the proposal still need to be changed in order to have a law that is compliant with Denmark's international human rights obligations, to fully reflect in the law that sex without consent is rape.

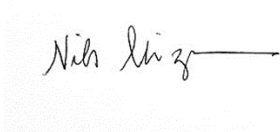
The Legal Commentary to the forthcoming consent law in its current wording states that even "total passivity" after a "concrete and overall assessment" will be able to constitute consent. The commentary continues stating that it will "naturally be possible to include in the assessment" whether the parties have previously had intercourse in a similar way.

I would like to warn clearly and loudly against both the wording and the underlying notion around passivity and sex: consent can only be given actively, whether it is given verbally or by action. Consent is not a one-off agreement which cannot be revoked, consent is ongoing and can be withdrawn at any time if someone changes their mind about continuing. Consent to sex, however it is expressed, needs to be given by all parties involved each and every time. Any deviation from that principle risks both vague legislation and keeping alive the misleading notion that people who have once had sex can assume consent in the future. It is just as problematic if, in a Danish court, total passivity during a previous sexual encounter can be interpreted as consent to sex on a later occasion. Having sex in practice means that there must be a minimum of active participation, and its absence should not be confused with consent. On the contrary, total passivity on the part of one party should give the Danish courts an opportunity to consider whether previous occasions with total passivity have not been abuse rather than passive participation.

This discussion of passivity may sound like legal technical wordplay. But for the sake of the sexual autonomy of everyone in Denmark - and for the cultural change that is now widely supported in Danish society - it is absolutely crucial that you as members of the Legal Committee ensure, before the law is passed, that passivity cannot be interpreted as consent in Denmark's new rape law and that consent cannot be automatically assumed in situations when parties had consensual sex in the past. You are at the brink of historic progress in the protection of human rights, and I urge you to cross the finish line without language that could harm and undermine the purpose and objective of the law.

Accordingly, Amnesty International recommends that paragraph s. 22 paragraph 4 (see attached page 22 underlining the paragraph) in the Legal Commentary is removed before the law is presented to Parliament for voting. I and my team are available for any questions and clarifications at europe@amnesty.org.

Yours sincerely,

A handwritten signature in black ink, reading "Nils Muižnieks", followed by a horizontal line extending to the right.

Nils Muižnieks
Director, Europe Regional Office